

UNANIMOUS SHAREHOLDERS AGREEMENT

among

REFRESHMENTS CANADA

- and -

COTT CORPORATION

- and -

ALBERTA BEVERAGE COUNCIL LTD.

- and -

ALBERTA DAIRY COUNCIL

- and -

**ALBERTA BEVERAGE CONTAINER
RECYCLING CORPORATION**

DATED: June 22nd, 2009.

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THIS AGREEMENT made this 22nd day of June, 2009.

BETWEEN:

REFRESHMENTS CANADA ("Refreshments")

- and -

COTT CORPORATION ("Cott")

- and -

ALBERTA BEVERAGE COUNCIL LTD. (the "Council")

- and -

ALBERTA DAIRY COUNCIL

- and -

ALBERTA BEVERAGE CONTAINER RECYCLING CORPORATION (the "Corporation")

THIS AGREEMENT is being entered into for the following reasons:

- A. The Corporation is duly incorporated and organized under the *Business Corporations Act* (Alberta) (the "Act"), having as its share capital, (i) an unlimited number of Class "A" Shares without nominal or par value (with voting rights and no dividend rights) and (ii) an unlimited number of Class "B" Shares without nominal or par value (without voting rights, with dividend rights and may be issued only with the unanimous consent of the holders of the Class A Shares).
- B. The Corporation is organized for the purpose of operating a common collection system in order to comply with the requirements of the Beverage Container Recycling Regulation under the *Environmental Protection and Enhancement Act* (Alberta) for the recovery and disposal of non-refillable beverage containers from depots.
- C. The Parties acknowledge that the Corporation will be governed in accordance with a focus on achieving its environmental objectives in accordance with its business principles.

The Parties further acknowledge the intention of the Corporation to carry on its activities on a not-for profit basis.

- D. The Parties have agreed that the terms, provisos and conditions herein shall govern the Corporation, the Shareholders and each of them and their respective nominees as directors of the Corporation as they are nominated from time to time and each of them, and the relationship between the Parties and each of them, all from and after the date of execution of this Agreement.

FOR THESE REASONS and in consideration of the mutual covenants and agreements contained in this Agreement and the sum of \$10.00 paid by each of the Parties to the other Parties (receipt of which is hereby acknowledged) the Parties agree to the following:

1.0 DEFINITIONS

In this Agreement the following words and phrases have the meanings ascribed to them:

- 1.1 "Act" means the *Business Corporations Act* (Alberta).
- 1.2 "Agreement" means this unanimous shareholders agreement and all amendments thereto.
- 1.3 "Class A Shares" means the unlimited number of Class "A" Shares without nominal or par value (with voting rights and no dividend rights) in the share capital of the Corporation.
- 1.4 "Class B Shares" means the unlimited number of Class "B" Shares without nominal or par value (without voting rights, with dividend rights and may be issued only with the unanimous consent of the holders of Class A Shares).
- 1.5 "Parties" means all of the Shareholders and the Corporation and "Party" means any one of the Parties.
- 1.6 "Shareholders" means a holder of any Shares and as of the date of this Agreement includes Refreshments Canada, Cott Corporation, Alberta Beverage Council Ltd., and the Alberta Dairy Council but shall also include any one who subsequently acquires Shares in accordance with this Agreement. "Shareholder" means any one of the Shareholders.
- 1.7 "Shares" means the Class A Shares and the Class B Shares.

2.0 SHARES HELD

- 2.1 The Parties acknowledge that as of the date of this Agreement 700 Class A Shares have been issued and are outstanding, as fully paid and non-assessable Shares, and they are held as follows:

Refreshments Canada	300 Class A Shares
Cott Corporation	100 Class A Shares
Alberta Beverage Council Ltd	200 Class A Shares
Alberta Dairy Council	100 Class A Shares

No Class B Shares have been issued and no Class B Shares are outstanding.

2.2 The Parties agree that no Class B Shares shall be issued by the Corporation without the prior unanimous written consent of all of the holders of the Class A Shares.

3.0 EFFECT OF AGREEMENT

3.1 Each of the Shareholders shall vote its Class A Shares or cause its Class A Shares to be voted and shall cause such meetings of the board of directors and Shareholders to be held, resolutions passed, by-laws enacted, agreements and other documents signed and acts and things performed and done as may be required in order to fully implement the terms and conditions of this Agreement. If any director refuses to exercise his or her discretion in order to fully implement the terms and conditions of this Agreement (for any reason other than the reason that those terms and conditions are prohibited by law or the director is prohibited by law from exercising his discretion in order to fully implement those terms and conditions), then each of the Shareholders shall immediately vote its Class A Shares or cause its Class A Shares to be voted in favour of the removal of that director.

3.2 In the event of any conflict between the provisions of this Agreement and the articles, the by-laws or any agreement to which the Corporation or a Shareholder is, becomes or may be deemed to be a party, the provisions of this Agreement will govern to the extent permitted by law. Each of the Shareholders agrees to vote its Class A Shares or cause its Class A Shares to be voted to amend the articles or the by-laws to the extent permitted by law to resolve any conflict in favour of the provisions of this Agreement.

4.0 BOARD OF DIRECTORS

4.1 The Shareholders shall cause to be elected from time to time a board of directors that will consist of nominees of the Shareholders and of certain other persons, as specified below. The board of directors of the Corporation shall consist of 8 directors and shall be composed as follows:

4.1.1 Refreshments Canada is entitled to nominate three directors, including replacements from time to time;

4.1.2 Cott is entitled to nominate one director, including a replacement from time to time;

4.1.3 Alberta Dairy Council is entitled to nominate one director including a replacement from time to time;

4.1.4 Alberta Beverage Council Ltd. is entitled to nominate two directors, including replacements from time to time; and

4.1.5 The Alberta Gaming and Liquor Commission is entitled to nominate one director, including a replacement from time to time.

On the fifth anniversary of the date of this Agreement and every five years thereafter, ABCRC will determine the market share based on unit sales volume of each market sector and will bring this information to the Shareholders. The Shareholders will then determine whether the market shares have changed sufficiently to change the rights to nominate to the Board, with the approval of 100% of the Shareholders being required to make any changes.

- 4.2 If a director of the Corporation dies or resigns or is removed from office as a director before the expiration of his or her term of office, or a vacancy is otherwise created on the board of directors, the remaining members of the board of directors shall, as the first item of business at the next meeting of the board of directors, fill the vacancy among the directors with a new nominee submitted by the nominating Party that nominated the director for which the vacancy exists. If the party that nominated the director for which the vacancy exists fails to nominate a replacement director within 2 months of the date the vacancy arose, the remaining directors shall fill that vacancy with someone from within the same market as the departing director.
- 4.3 The quorum for meetings of the board of directors shall be not less than a majority of the directors duly elected from time to time; if a quorum is not constituted at a duly called meeting of directors, the chairman shall give the minimum required notice for another meeting of directors and if a quorum is again not constituted the chairman shall call a meeting of the Shareholders to which will be referred all the intended business of the directors' meeting. If a quorum is present at the beginning of the meeting, the meeting may conduct its business even though quorum may not be present throughout the entire meeting.
- 4.4 Except as otherwise required by the Act, the board of directors shall manage the business and affairs of the Corporation.
- 4.5 The offices of the Corporation shall be designated by the board of directors, who shall annually appoint individuals to hold such offices. The officers of the Corporation may, in the discretion of the directors, be chosen from among the directors of the Corporation.
- 4.6 Subject to section 5, no business shall be transacted at any meeting of the board of directors of the Corporation without the approval of at least a majority of the directors present at such meeting. In the case of an equality of votes at a meeting of the directors, the chairperson shall not have a casting vote. In addition, a resolution in writing, signed by all of the directors entitled to vote on that resolution at a meeting of directors or committee of directors, is as valid as if it had been passed at a meeting of directors or committee of directors. No business which is transacted by the Corporation or by the directors of the Corporation, and no resolution of the directors, which is not approved in accordance with this section 4.6, shall have any force or effect or validity whatsoever.
- 4.7 The Shareholders shall take any corporate or other proceedings that may be necessary or expedient to carry out the true intent and meaning of this Agreement.

- 4.8 It is intended that the Corporation, in the ordinary course of its not-for-profit business, may enter into transactions with any of the Shareholders or with any related or subsidiary company thereof, provided such transactions are:
 - 4.8.1 fully disclosed to the directors of the Corporation in respect of all material terms, including those related to payments;
 - 4.8.2 first approved by all directors of the Corporation; and
 - 4.8.3 at fair market value.

The other Shareholders shall be accorded full opportunity at any time, upon request, to have the auditors of the Corporation review the financial records of the Corporation to ascertain whether the transactions are at fair market value.

- 4.9 Any payments to be made by the Corporation to any Shareholder must be:
 - 4.9.1 for services performed by that Shareholder;
 - 4.9.2 fully disclosed to the directors of the Corporation in respect of all material terms related to the payments; and
 - 4.9.3 first approved by at least a majority of the directors of the Corporation.
- 4.10 Written notice of any meeting of the board of directors shall be given not less than 7 business days, nor longer than 21 business days, and, in the case of any meeting of Shareholders, not less than 21 days, nor longer than 50 days, before such meeting, stating in reasonable detail the nature of any significant business to be transacted at such meeting. All Shareholders that have not then nominated a director, or do not then have an elected nominee director, either individually or collectively, shall nonetheless receive copies of all notices, correspondence, resolutions, minutes and other documentation sent to the directors from time to time.
- 4.11 The Corporation shall only carry on its activities on a not-for-profit basis, and this provision cannot be amended or deleted without the prior approval of all of the Shareholders.
- 4.12 The Shareholders will ensure that their nominees have sufficient time available to devote to the duties of a director of ABCRC.

5.0 PROTECTION OF MINORITY

- 5.1 The Corporation shall not take action, without the approval of Shareholders holding not less than 75% of the Class A Shares then issued and outstanding, such approval only to be given at a special meeting of Shareholders duly called for that purpose, in respect of any of the following matters:

- 5.1.1 the sale, transfer, disposal, mortgage or encumbrance of any of its assets out of the normal course of its not-for-profit business except for granting security to its bankers on its inventory and book debts for the purpose of normal working capital financing;
- 5.1.2 payment of any management fees, pay bonuses, finders fees or like amounts to any person;
- 5.1.3 prescribing or increasing the remuneration for any directors or Shareholders;
- 5.1.4 the entering into of any contract, agreement (including the making of any loan) or obligation or the incurrence of any liability (contingent or present) other than in the ordinary course of its not-for-profit business;
- 5.1.5 any material change of the not-for-profit business of the Corporation;
- 5.1.6 the taking, holding, subscribing for or agreement to purchase or acquire shares in the capital of another company;
- 5.1.7 the appointment of auditors or accountants for the Corporation.
- 5.2 The Corporation shall not take action, without the approval of Shareholders holding 100% of the Class A Shares then issued and outstanding, such approval only to be given at a special meeting of Shareholders duly called for that purpose, in respect of any of the following matters:
 - 5.2.1 changes in its capital structure, incurring of funded debt and the sale, issuance, transfer, encumbrance or other disposal of its capital stock or any option, warrant, or other security that is convertible to capital stock, except as contemplated herein;
 - 5.2.2 the institution of any steps or proceedings for the reorganization, winding-up or dissolution of the Corporation or the institution of any proceedings pursuant to:
 - 5.2.2.1 the *Bankruptcy Act* (Canada),
 - 5.2.2.2 the *Companies' Creditors Arrangement Act* (Canada), or
 - 5.2.2.3 any similar legislation;
 - 5.2.3 the application for Articles of Amendment for any purpose permitted by the Act, any resolution requiring other than a simple majority under the Act or any change in the by-laws of the Corporation;
 - 5.2.4 the entering into of a partnership, co-operation, joint venture or reciprocal concession with any other person, firm or corporation or of any arrangement for sharing profits;

- 5.2.5 the Corporation entering into any transactions with any of the Shareholders or with any related or subsidiary company thereof, out of the ordinary course of its not-for-profit business;
- 5.2.6 the exercise of the Option to repurchase Shares of the Shareholders in accordance with section 8.1;
- 5.2.7 the declaration and payment of dividends with respect to the Class B Shares, if and when any Class B Shares are issued;
- 5.2.8 any change in the election of directors process pursuant to section 4.1.

6.0 TRANSFER OF SHARES

- 6.1 No Shares may be sold, transferred, assigned, pledged, hypothecated, encumbered or otherwise disposed of, directly or indirectly, by a Shareholder without the prior written consent of the board of directors and all of the Shareholders, except in accordance with sections 6.2 and 8.1.
- 6.2 A Shareholder wishing to sell, transfer, assign or otherwise dispose of its Shares, or any portion of its Shares, may notify the Corporation. Upon receipt of such notice the Corporation shall purchase the Shares for the purchase price of \$1.00 per Share, subject to section 34 of the Act and subject to section 19.1 of this Agreement. Upon payment therefore the Shareholder shall convey title to those Shares to the Corporation free and clear of all claims, charges and encumbrances whatsoever, whereupon such purchased Shares shall be cancelled.
- 6.3 Each of the Parties will cause any person who purchases or otherwise acquires Shares to become bound by this Agreement by either executing a counterpart of or by an amendment to this Agreement. No person who acquires any interest or control over Shares will be recognized as a Shareholder or afforded any of the rights or remedies connected with being a Shareholder unless that person becomes bound by this Agreement by either executing a counterpart of or an amendment to this Agreement.

7.0 ANTI-DILUTION PROVISIONS

- 7.1 Except as otherwise provided in this Agreement, in the event of any reduction, redemption or purchase for cancellation of the share capital of the Corporation, such reduction, redemption or purchase for cancellation shall be made pro rata to the shareholdings of each of the Shareholders.

8.0 BANKRUPTCY OF SHAREHOLDER

- 8.1 Each of the Shareholders hereby grant to the Corporation an irrevocable option (the "Option"), which Option shall be exercisable only upon the bankruptcy, insolvency, winding-up or liquidation of that Shareholder (the "Insolvent Shareholder"), or in the event that a receiver is appointed in respect of the whole or substantially the whole of the Insolvent Shareholder's property and assets, or in the event of the transfer or assignment,

voluntary or involuntary, by the Insolvent Shareholder of its Shares to any creditor, in total or partial satisfaction of any debt, obligation, judgment or other liability (any such assignee, trustee, receiver or transferee being hereinafter called the "Special Transferee") to purchase the Insolvent Shareholder's Shares at a purchase price of \$1.00 per Share. Upon the Option becoming exercisable, the Corporation may exercise the Option by delivering notice to the Insolvent Shareholder, to the Special Transferee and all other Shareholders, whereupon the Corporation shall transfer the Insolvent Shareholder's Shares to the Corporation and then cancel such Shares.

9.0 COST OF RELATED COUNCIL

- 9.1 The Corporation shall pay for all of the recurring legal, accounting, audit, registration, reporting and filing fees and expenses, and associated professional fees, incurred by the Council with respect to an Annual General Meeting of the Council in Alberta, and with respect to the election of one or more Directors to the Board of the Corporation or the Beverage Container Management Board, and with respect to maintaining the status and basic governance of the Council as a legal entity. In addition, the Corporation shall pay for all fees and expenses, including associated professional fees, incurred by the Council in taking all reasonable actions and steps required in order to create, initiate and establish the Council's ability to be self-funding on a sustainable basis and thus, no longer dependent on the Corporation for its financial requirements. Any additional expenses for which the Council wants reimbursement from the Corporation, it will first have those expenditures approved by the Corporation, such approval not to be unreasonably withheld.
- 9.2 The Council's right to have its fees and expenses reimbursed by the Corporation under this clause 9 shall terminate on December 31, 2014 with respect to all fees and expenses incurred by the Council after December 31, 2014.

10.0 UNANIMOUS SHAREHOLDERS AGREEMENT

- 10.1 This Agreement shall govern all of the business and affairs of the Corporation, which business and affairs are restricted in all cases to not-for-profit business and affairs, and further, this Agreement is a unanimous shareholders' agreement within the meaning of the Act.
- 10.2 A copy of this Agreement shall be inserted in the minute book of the Corporation and any Shares previously or hereafter issued to the Parties shall bear the following endorsement in bold type:

**"THE SHARES REPRESENTED BY THIS CERTIFICATE
ARE SUBJECT TO A UNANIMOUS SHAREHOLDERS
AGREEMENT"**

11.0 NOTICE

- 11.1 Any notice required or permitted to be given hereunder shall be in writing and may be effectively given by personal service or by letter and sent by registered mail, postage

prepaid, addressed to each Shareholder and the Corporation at the address and to the attention of the person set out in Schedule "A". Any notice given as aforesaid and mailed within Canada shall be deemed to have been received on the 5th business day following the mailing thereof, provided mail is being delivered. Any notice may also be sent by telecopier to each Party which has provided a telecopier number as noted below and if so sent shall be deemed to have been received on the date sent. The Parties agree that for the giving of notice the addresses set out in Schedule "A" hereto are correct as of the date of signing this Agreement. Any change of address, individual person's attention, telephone, or telecopier number shall be communicated to the Parties by notice sent no later than 14 days after the change.

12.0 TIME OF ESSENCE

12.1 Time shall be of the essence of this Agreement.

13.0 FURTHER ASSURANCES

13.1 Each of the Shareholders severally covenant and agree that they and their respective nominees as directors will sign such further agreements, assurances, papers and documents, attend such meetings, enact such by-laws, pass such resolutions, exercise such votes and influence, and do and perform, and cause to be done and performed, such further and other acts and things as may be necessary or desirable from time to time in order to give full effect to this Agreement and every part hereof.

14.0 FINAL AGREEMENT

14.1 This Agreement expresses the final agreement amongst the Parties with respect to all matters herein and its execution has not been induced by, nor do any of the Parties rely upon or regard as material any representations or promises whatsoever not incorporated herein or made a part hereof and which relate to the matters herein. This Agreement shall not be altered, amended or qualified except by memorandum in writing signed by all of the Parties, and any alteration, amendment or qualification shall be null and void and shall not be binding upon any such Party unless so made.

15.0 HEADINGS

15.1 The headings to the sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

16.0 INTERPRETATION

16.1 When used herein, words importing the singular number shall include the plural, the masculine shall include the feminine, and words importing persons includes bodies corporate.

17.0 COUNTERPARTS

17.1 This Agreement may be executed in several counterparts which shall together constitute one and the same instrument and if any of the Parties has executed any one of such counterparts, they shall be deemed to have executed all of the counterparts.

18.0 SUCCESSORS AND PERMITTED ASSIGNS

18.1 Other than as permitted by this Agreement, none of the Parties may assign this Agreement or any interest therein without the prior written consent of all of the other Parties. Any permitted assignee or transferee shall agree as a condition of the assignment or transfer to become a signatory to this Agreement.

18.2 This Agreement shall be binding upon and enure to the benefit of the Parties and their respective successors (which term as used herein shall include a trustee in bankruptcy or any other person who succeeds by operation of law) and permitted assigns or transferees of the Shares, as if they were in every case named and expressed as Parties.

19.0 TRANSFER TO CONTROLLED CORPORATION

19.1 Notwithstanding section 18.1 or article 6, a Shareholder may transfer Shares to a corporation, council or other entity affiliated (as such term is defined in the Act) with the Shareholder provided that at the time of any such transfer, any successor or assignee shall in writing agree to be bound by the terms and provisions of this Agreement and further provided the Shareholder shall covenant not to transfer the Shares to such transferee corporation except in accordance with the provisions of this section.

20.0 TERMINATION AGREEMENT

20.1 This Agreement shall terminate when only one Shareholder holds Shares or upon the written agreement of all of the Parties to that effect.

21.0 LAW APPLICABLE

21.1 This Agreement shall be construed in accordance with and governed by the laws of Alberta and Canada as applicable therein.

22.0 LEGISLATION

22.1 All references in this Agreement to any legislation will be deemed to include all amendments to that legislation, all regulations under that legislation and any statutes, including amendments and regulations, that may be substituted for that legislation.

23.0 EFFECT OF INVALIDITY OF PROVISION

- 23.1 If any part of this Agreement is declared to be null and void by a court of competent jurisdiction, the remainder of this Agreement shall not thereby be affected and shall continue in full force and effect unless rendered inoperative because of the nullity or removal of an essential or fundamental part thereof.

24.0 NON-WAIVER

- 24.1 Any failure from time to time of the Parties to avail itself of any one or more of the terms and conditions hereof shall not constitute a waiver of the terms and conditions or preclude the Party from thereafter relying upon the terms and conditions.

25.0 PRIOR AGREEMENTS

- 25.1 This Agreement supercedes all previous unanimous shareholders agreements among the Shareholders and the Corporation including without limitation the existing Unanimous Shareholder Agreement dated the 8th of February, 1995 between Gray Beverage Inc. and Pepsi-Cola Canada Beverages (West) and Coca-Cola Beverages Ltd. and Alberta Private Label Beverage Council Ltd. and Alberta Juice and Water Beverage Council Ltd. and Alberta Beverage Container Recycling Corporation.

IN WITNESS WHEREOF this Agreement has been executed by each of the Parties under their respective corporate seal, as witnessed by the hand of their respective proper officers duly authorized in that behalf, as of the day and year first above written.

REFRESHMENTS CANADA

Per: _____

COTT CORPORATION

Per: _____

ALBERTA BEVERAGE COUNCIL LTD.

Per: _____

ALBERTA DAIRY COUNCIL

Per: _____

**ALBERTA BEVERAGE CONTAINER
RECYCLING CORPORATION**

Per: _____